

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EUREKA! PET FOOD, INC., a Florida Corporation,

Plaintiff,

V.

**ROSS-WELLS, INC., a Wisconsin
Corporation,**

Defendant.

No.2:18-cv-00252-MJP

STIPULATED PROTECTIVE ORDER

NOTE ON CALENDAR:
July 13, 2018

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged:

- 4 • Documents relating to the parties’ customers, including without limitation,
5 documents reflecting customer contact information and purchase history;
- 6 • Documents relating to product sourcing or pricing;
- 7 • Documents relating to or reflecting product development or manufacturing,
8 including, but not limited to, product formulas or recipes;
- 9 • Documents reflecting confidential and sensitive financial information,
10 including without limitation, bank statements, profit and loss statements,
11 financial statements, tax returns, or other similar records;
- 12 • Documents or other personal information regarding the parties’ current and
13 former principals or employees, including without limitation, personnel files.

14 3. SCOPE

15 The protections conferred by this agreement cover not only confidential material (as
16 defined above), but also (1) any information copied or extracted from confidential material;
17 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
18 testimony, conversations, or presentations by parties or their counsel that might reveal
19 confidential material.

20 However, the protections conferred by this agreement do not cover information that
21 is in the public domain or becomes part of the public domain through trial or otherwise.

22 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

23 4.1 Basic Principles. A receiving party may use confidential material that is
24 disclosed or produced by another party or by a non-party in connection with this case only
25 for prosecuting, defending, or attempting to settle this litigation. Confidential material may
26 be disclosed only to the categories of persons and under the conditions described in this

1 agreement. Confidential material must be stored and maintained by a receiving party at a
2 location and in a secure manner that ensures that access is limited to the persons authorized
3 under this agreement. The parties further agree that all non-public material that is disclosed
4 or produced by another party or by a non-party in connection with this case shall be used
5 only for purposes of prosecuting, defending, or attempting to settle this litigation.

6 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
7 ordered by the court or permitted in writing by the designating party, a receiving party may
8 disclose any confidential material only to:

9 (a) the receiving party’s counsel of record in this action, as well as
10 employees of counsel to whom it is reasonably necessary to disclose the information for
11 this litigation;

12 (b) the officers, directors, and employees (including in house counsel) of
13 the receiving party to whom disclosure is reasonably necessary for this litigation, unless the
14 parties agree that a particular document or material produced is for Attorney’s Eyes Only
15 and is so designated;

16 (c) experts and consultants to whom disclosure is reasonably necessary
17 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
18 (Exhibit A);

19 (d) the court, court personnel, and court reporters and their staff;

20 (e) copy or imaging services retained by counsel to assist in the
21 duplication of confidential material, provided that counsel for the party retaining the copy
22 or imaging service instructs the service not to disclose any confidential material to third
23 parties and to immediately return all originals and copies of any confidential material;

24 (f) during their depositions, witnesses in the action to whom disclosure
25 is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
26 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the

court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

1 If it comes to a designating party's attention that information or items that it
2 designated for protection do not qualify for protection, the designating party must promptly
3 notify all other parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this
5 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated
6 or ordered, disclosure or discovery material that qualifies for protection under this
7 agreement must be clearly so designated before or when the material is disclosed or
8 produced.

9 (a) Information in documentary form: (*e.g.*, paper or electronic
10 documents and deposition exhibits, but excluding transcripts of depositions or other pretrial
11 or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each
12 page that contains confidential material. If only a portion or portions of the material on a
13 page qualifies for protection, the producing party also must clearly identify the protected
14 portion(s) (*e.g.*, by making appropriate markings in the margins).

15 (b) Testimony given in deposition or in other pretrial proceedings: the
16 parties and any participating non-parties must identify on the record, during the deposition
17 or other pretrial proceeding, all protected testimony, without prejudice to their right to so
18 designate other testimony after reviewing the transcript. Any party or non-party may, within
19 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,
20 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-
21 party desires to protect confidential information at trial, the issue should be addressed
22 during the pre-trial conference.

23 (c) Other tangible items: the producing party must affix in a prominent
24 place on the exterior of the container or containers in which the information or item is
25 stored the word "CONFIDENTIAL." If only a portion or portions of the information or

1 item warrant protection, the producing party, to the extent practicable, shall identify the
2 protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
4 to designate qualified information or items does not, standing alone, waive the designating
5 party's right to secure protection under this agreement for such material. Upon timely
6 correction of a designation, the receiving party must make reasonable efforts to ensure that
7 the material is treated in accordance with the provisions of this agreement.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any party or non-party may challenge a designation
10 of confidentiality at any time. Unless a prompt challenge to a designating party's
11 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
12 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party
13 does not waive its right to challenge a confidentiality designation by electing not to mount a
14 challenge promptly after the original designation is disclosed.

15 6.2 Meet and Confer. The parties must make every attempt to resolve any
16 dispute regarding confidential designations without court involvement. Any motion
17 regarding confidential designations or for a protective order must include a certification, in
18 the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet
19 and confer conference with other affected parties in an effort to resolve the dispute without
20 court action. The certification must list the date, manner, and participants to the conference.
21 A good faith effort to confer requires a face-to-face meeting or a telephone conference.

22 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
23 intervention, the designating party may file and serve a motion to retain confidentiality
24 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The
25 burden of persuasion in any such motion shall be on the designating party. Frivolous
26 challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary

1 expenses and burdens on other parties) may expose the challenging party to sanctions. All
2 parties shall continue to maintain the material in question as confidential until the court
3 rules on the challenge.

4 7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
5 **OTHER LITIGATION**

6 If a party is served with a subpoena or a court order issued in other litigation that
7 compels disclosure of any information or items designated in this action as
8 “CONFIDENTIAL,” that party must:

9 (a) promptly notify the designating party in writing and include a copy
10 of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or
12 order to issue in the other litigation that some or all of the material covered by the subpoena
13 or order is subject to this agreement. Such notification shall include a copy of this
14 agreement; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the designating party whose confidential material may be affected.

17 8. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
19 confidential material to any person or in any circumstance not authorized under this
20 agreement, the receiving party must immediately (a) notify in writing the designating party
21 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
22 the protected material, (c) inform the person or persons to whom unauthorized disclosures
23 were made of all the terms of this agreement, and (d) request that such person or persons
24 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
25 Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of
5 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-
7 discovery order or agreement that provides for production without prior privilege review.
8 The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth
9 herein.

10 10. NON TERMINATION AND RETURN OF DOCUMENTS

11 Within 60 days after the termination of this action, including all appeals, each
12 receiving party must return all confidential material to the producing party, including all
13 copies, extracts and summaries thereof. Alternatively, the parties may agree upon
14 appropriate methods of destruction.

15 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
16 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
17 deposition and trial exhibits, expert reports, attorney work product, and consultant and
18 expert work product, even if such materials contain confidential material.

19 The confidentiality obligations imposed by this agreement shall remain in effect
20 until a designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: July 13, 2018.

3 **O'NEIL, CANNON, HOLLMAN,**
4 **DEJONG & LAING S.C.**

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25 *Attorneys for Plaintiff*

26 DATED: July 13, 2018.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: July 16, 2018

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The Honorable Marsha J. Pechman
United States Senior District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on _____ in the case of EUREKA! PET FOOD, INC. v. ROSS-WELLS, INC., Case No. 2:18-cv-00252-MJP. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature: